



FPA

Fairness in Procurement Alliance

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November 6th, 2007

The Honorable Edolphus Towns, Chairman
Government Management, Organization, and Procurement Subcommittee
House of Representatives
Washington, DC 20515

Dear Mr. Chairman,

The purpose of this communication is to petition you to write an official letter from your Committee requesting David Walker, Comptroller General at GAO to order his General Counsel Office to rule on the subject of the 'FAR Exemptions.' GAO has avoided addressing the issue, which challenges - among other things - the right of GSA to exclude small businesses from the Federal Supply Schedule. Additionally, DOD and the State Department might be attempting to do the same with the 'foreign exemptions' which likewise, exclude small businesses from 'foreign' procurements. According to the GAO regulations, your role as Chairman of a Subcommittee in Congress allows you to request a GAO ruling on a significant case and this case impacts on billions in Federal contracts, Congress has – by statute – determined that should go to small businesses.

I am appealing to you on behalf of our constituency of 10 million small and minority businesses whose procurement interests, FPA represents. The appeal is supported by my Congressman, John Mica, and by 15 separate advocacy trade groups (refer to attached list) all of whom have endorsed the goal behind the GAO challenges which have been filed to help get rid of both exemptions.

As you are already aware, on October 30th, the House passed H.R. 3867, 'The Small Business Contracting Program Improvements Act,' with a specific amendment that conveyed the SENSE of THE HOUSE, that 'small business set-asides should **not** be excluded from any acquisitions under the General Services Administration's Federal Supply Schedule.'

This amendment followed the September 4th SBA historic ruling, which had declared the GSA exemption, '**illegal**' and had sent a clear message to GAO to address the subject of a protest (B-309911) before them in order to help the process of getting rid of an illegal regulation. The entire advocacy community is outraged, however, with the GAO action of November 2nd of avoid issuing a ruling on the subject by dismissing the protest claiming – erroneously I might add - that "I was not an interested party to be able to raise the protest."



**Representing the procurement interests of the 10 million small businesses
for whom Congress created the 'set-aside program'**

The **real** issue of the protest is the government's injustice of allowing the existence of a regulation without authority to exempt (in the legislature which created the GSA Program,) nor statutory grounds to have been written into the FAR. This action – which took advantage of our community's lack of legal representation and resources - has allowed the diversion of billions in federal contracts away from small and minority businesses as mandated by Congress.

Our community believes that the results of your hearing of September 28th, including my own testimony, has made you well aware of the damage that both the 'GSA exemption' as well as 'the foreign exemption' have caused to our community. FPA has estimated – with assistance from Congressional sources - that *these exemptions have illegally diverted – over the last decade - \$640 Billion worth of Federal contracts away from small businesses.*

I am taking the liberty of providing you, with a link to all of the filings and relevant documents relating to the FAR Exemption case: <http://fitnet.net/fpa/press/releases.html>

For your information, I have taken a number of additional actions to challenge the FAR exemptions. Your intervention, however, is crucial in getting GAO involved in the process of safeguarding our community's interests. Companion protests (B-310669 and B-310670) challenging the 'foreign exemptions have been filed;' the OFPP Administrator has been asked to rule on the '*consistency of the exemptions with applicable law*' to force the Executive Branch for a ruling and lastly, I have petitioned the Advocacy Office to tackle the issue of the 'exemptions' as part of their 'R3 initiative.' Yes, I am confident that the 'exemptions' – with your assistance – will be eliminated. Once that is done, FPA intends to pursue, with your help and with the support of Congress, a re-alignment of the procurement landscape, as far as set-asides are concerned, to level the playing field and give small and minority businesses legal protection and fair access, to federal contracts.

FPA does have a plan, crafted by entrepreneurs, which would solve the endemic problems Congress has already acknowledged are affecting the 'set-aside program.' The FPA plan unofficially referred to as 'the umbrella' streamlines the set-aside process making the system more effective, more transparent and more responsive.

I have faith on the system and trust our community can count on your leadership and support by sending a request to GAO to rule on the subject of the FAR exemptions (both the 'GSA exemption as well as the 'foreign' exemptions.) Please contact me at 904.347-4726 if I can answer any questions or supply additional information.

Thank you for the opportunity to make a difference,



Raul Espinosa
Founder and Spokesperson

Enclosures

cc. Congressman John Mica
Paul Denett, Administrator, Office of Federal Procurement Policy (OFPP)
David Walker, GAO Comptroller General
John Klein, Esq., SBA General Counsel
Small and Minority Businesses Trade Group List

SUPPORT FOR ELIMINATION OF THE FAR EXEMPTIONS

"These GSA Schedule exemptions threaten the integrity of the government's small business development programs and the statutory mandate of Congress. Exempting the Schedules from FAR Part 19 was not the intent of the Congress. Small businesses are the backbone of America. The SBA's recent legal opinion involving this case sums it up better than I can...the GAO needs to rule on this case and put an end to these illegal exemptions!"

**Ronald Newlan, Chairman
HUBZone Contractors National Council**

"Opening government procurement to small businesses rests with enhancing their access to the contracts, modernizing the system and simplifying the bidding processes. Government has an obligation to abide by the statutory mandate of the Small Business Act. The FAR exemptions are obviously illegal and there's no excuse for allowing them to continue to influence government procurement. The system is in need of both an upgrade and of a lot of reform."

**Karen Kerrigan, President,
Small Business & Entrepreneurship Council**

"This SBA decision is a huge win for the small business community and fair competition. SBA has confirmed what Congress has been saying all along: the so-called 'set-aside exemptions from the Small Business Act have no legal justification. Now, it is time for the GAO to hold bureaucrats accountable for ignoring Congressional policy on fair treatment of small businesses."

**Max Kidalov, Former Republican Counsel
Senate Committee on Small Business and Entrepreneurship**

"This Legal Opinion, freeing in excess of \$60 Billion in annual contracts for small businesses, opens the way for the Senate to support the House Bill (H.R. 1783) calling for an increase in the set-aside ceiling from 23 to 30 percent."

**Roger Campos, President and CEO
Minority Business RoundTable (MBRT)**

"GSA has displayed absolute arrogance and an attitude as if they were above the law, the Small Business Act and the Civil Rights Act of 1964. Technically, these exemptions are anti-American and a vile act against the economical lifelines of certain sectors of our society. We must show our outrage and demand correction immediately."

**Harry C. Alford, Co-Founder, President/CEO,
National Black Chamber of Commerce.**

"OFPP must now re-train the entire government procurement workforce with rules favorable to small businesses. SBA must now also instruct its field staff to begin assisting small businesses who challenge procurements under \$100,000 which are either restricted to GSA Schedule Holders Only or are considered Foreign and exclude small and minority businesses."

**Hank Wilfong, President and CEO
National Association of Small and Disadvantaged Businesses (NASDB)**

"SBA's Legal Opinion validates that Congress intent is not carried out for small and minority businesses and contracts for large businesses keep getting larger with 80% going sole source without competition at greater cost to the public."

**Rawley Soberano, President and CEO
Asian American Business RoundTable (AABRT)**

"This SBA Legal Opinion is extraordinary because it verifies that the 'set-aside exemptions' are and have always been illegal and discriminatory towards small and minority businesses."

**Anthony Robinson, President
MBELDEF**

"This historic SBA legal opinion confirms that the exemptions are responsible for having diverted more than \$600 billion in federal contracts away from small businesses over the last ten years."

**Lloyd Chapman, President
American Small Business League (ASBL)**

“FPA should now be given a say on any decision which would re-align the procurement landscape the way Congress intended.”

Dr. Henry Thomas

FPA Think Tank at The University of North Florida

“This is a significant step towards expanding opportunities for small businesses to compete more effectively in the global marketplace,”

**Karen Atkinson, Executive Director
Native American Contractors Association (NACA).**

“Women business owners have struggled for years to achieve fair competitive opportunities to access government contracts. The statutory set aside rules were intended to make sure that small businesses – including women-owned small businesses – have fair access to contracts. By forcing the GSA to finally comply with the law, the SBA has finally taken one step towards making sure women business owners can fairly compete for and win federal contracts.”

Margot Dorfman, CEO

U.S. Women’s Chamber of Commerce

“Small business owners have been excluded from billions of dollars every year as the General Services Administration (GSA) has sought to ignore the will of Congress and direct purchase after purchase to large businesses. We are elated to finally have this clear legal ruling that will compel the GSA to obey the law. Our country is well served to assure that our small businesses have fair access to federal contracts. Small businesses provide flexibility, innovation, quality service and employ millions and millions of Americans supporting our communities and families.”

**Cris Young, President
National Procurement Council (NPC)**

“These illegal regulations have done more damage to public confidence in government contracting and to the economic viability of small business than 9/11 and Katrina combined and FPA is determined to stop their influence on the procurement community.”

**Raul Espinosa, Founder and Spokesperson
Fairness in Procurement Alliance (FPA)**

LAMA supports Congressman Mica’s amendment to HR 3867 which stipulates that small business set-asides should not be excluded from any acquisitions under the General Services Administration’s Federal Supply Schedule now that SBA has declared the GSA Exemption illegal.”

**Stephen Denlinger
President - LAMA**